



STATE OF WASHINGTON
OFFICE OF THE STATE HUMAN RESOURCES DIRECTOR

DIRECTOR'S REVIEW PROGRAM
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(360) 664-0388 · FAX (360) 586-4694

August 1, 2012

TO: Tamara Roberson

FROM: Teresa Parsons, SPHR
Director's Review Program Supervisor

SUBJECT: Tamara Roberson v. Tacoma Community College (TCC)
Director's Review Request RULE-12-001

On April 24, 2012, the Office of the State Human Resources Director (OSHRD) received your request for a Director's review asking the Director to take remedial action to confer permanent status. On April 27, 2012, Karen Wilcox, Director's Review Coordinator, sent an email to TCC's Human Resources (HR) Office requesting information about your temporary employment history with TCC.

WAC 357-19-450 provides, in part, the following:

For individuals in higher education temporary appointments under the provisions of WAC [357-19-435](#)(1), the director may take remedial action to confer permanent status, set base salary, and establish seniority when it is determined that the following conditions exist:

(1) The employee has worked in one or more positions for more than one thousand fifty hours in any twelve consecutive month period since the original hire date or October 1, 1989, whichever is later. (Overtime and time worked as a student employee under the provisions of WAC [357-04-040](#) are not counted in the one thousand fifty hours).

On June 24, 2012, Paula Sheldon, Employment Manager, provided documentation indicating your temporary appointment as a part-time hourly employee in an Office Clerk 1 position in the Student Programs department initially began on June 8, 2004, and that you worked in part-time hourly appointments from June 8, 2004 through September 17, 2006 in accordance with WAC 357-19-435(1) (Exhibit B-1).

However, in her letter, Ms. Sheldon indicates you were appointed to an Administrative/Professional exempt position as a Student Support Specialist effective September 18, 2006 through June 30, 2007. Ms. Sheldon indicates you have continued in that position annually thereafter.

On April 24, 2012, you filed a request for a Director's review alleging a violation by Tacoma Community College (TCC) of the civil service law and rules regarding the appointment of your employment as an exempt employee at TCC. The Director's review has been completed based on a review of the written documents in the record.

Director's Determination

As the Director's designee, I carefully considered all of the documentation and exhibits in the file. After reviewing the information provided, I conclude your position is exempt from civil service and therefore not subject to the provisions of Chapter 41.06 RCW and Title 357 WAC generally and WAC 357-19-450(1) specifically. Therefore, the Director's Review Program lacks jurisdiction to consider your request under Chapter 357-49 WAC.

Nature of Alleged Violation

You allege TCC violated RCW 41.06.070, RCW 41.06.152, WAC 357-04-060, WAC 357-19-435, and additional rules with regard to your position as an exempt employee at TCC (Exhibit A-1).

RCW 41.06.070 establishes laws regarding exemptions.

WAC 357-04-060 states the following:

The director must determine the salary and fringe benefits of all positions presently or hereafter exempted except for the following:

- (a) Chief executive officer of each agency;
 - (b) Full-time members of boards and commissions;
 - (c) Administrative assistants and confidential secretaries in the immediate office of an elected state official; and
 - (d) Personnel listed in RCW [41.06.070](#) (1)(j) through (u), (1)(x) and (2).
- (2) Actions taken to establish or revise exempt salaries must meet the provisions outlined in RCW 41.06.152.

RCW 41.06.152 establishes laws regarding job classification revisions, class studies, and salary adjustments.

WAC 357-19-435(1) states in relevant part that a higher education employer may

make a temporary appointment when, "[t]he number of hours to be worked by the individual will not exceed one thousand fifty hours in any twelve consecutive month period from the original date of hire or October 1, 1989, whichever is later, in accordance with WAC 357-04-045."

Background

You are currently employed at TCC in the Assessment/GED Final Testing/Access Services department. You serve in an Administrative/Professional exempt position as a Student Support Specialist. The College indicates that your position is federally funded and contracted on a temporary basis because funding is not guaranteed from year-to-year.

In accordance with WAC 357-19-435(1), you were originally hired as a part-time hourly employee on June 8, 2004. You were hired as a part-time hourly Office Clerk 1 employee working in the Student Programs department. This position ended on June 15, 2005, when you were separated from employment following graduation from TCC.

You were also hired as a part-time hourly employee as an Assessment Assistant V on July 21, 2004, and you continued working as a temporary part-time employee from June 8, 2004 through September 17, 2006, in accordance with WAC 357-19-435(1).

You signed an Administrative/Professional (AP) exempt agreement to perform the duties of a Temporary AP exempt employee in the position of Student Support Specialist effective September 18, 2007 through June 30, 2007 (Exhibit B-2). You have been reappointed to this position annually thereafter.

On April 24, 2012, you filed an appeal with the Office of the State Human Resources Director, alleging a violation by Tacoma Community College (TCC) of the civil service law and rules regarding the appointment of your employment as an exempt employee at TCC.

Summary of Tamara Roberson's Allegations

You allege TCC has violated the civil service law and rules regarding your appointment as an exempt employee at TCC. You contend you are an exempt employee who is not officially considered management, which is inconsistent with exemptions reserved for executive and senior level management. You are requesting that your position be re-examined by the Office of the State HR Director for an appropriate description, class, and salary allocation.

Summary of TCC's Response to Alleged Rule Violations

TCC states the College has several categories of employees including faculty, classified, Administrative/Professional exempt, hourly, and students. TCC asserts you accepted an appointment to an exempt, at-will position as a Student Support Specialist. TCC asserts your appointment to the position is not a temporary appointment under 357-19-435(1) and is exempt from Chapter 41.06 RCW and the Fair Labor Standards Act (FLSA). Instead, TCC

contends your position is contracted and paid an annualized salary and is not a classified or hourly position covered by civil service rules.

Therefore, TCC asserts you lack standing to file an appeal requesting remedial action with respect to the temporary appointment rules.

Director's Rationale and Determination

RCW 41.06.070(2) states in part, "[t]he following classifications, positions, and employees of institutions of higher education and related boards are hereby exempted from coverage of this chapter [Chapter 41.06 RCW] . . ."

- (a) Members of the governing board of each institution of higher education and related boards, all presidents, vice presidents, and their confidential secretaries, administrative, and personal assistants; deans, directors, and chairs; academic personnel; and executive heads of major administrative or academic divisions employed by institutions of higher education; principal assistants to executive heads of major administrative or academic divisions; other managerial or professional employees in an institution or related board having substantial responsibility for directing or controlling program operations and accountable for allocation of resources and program results, or for the formulation of institutional policy, or for carrying out personnel administration or labor relations functions, legislative relations, public information, development, senior computer systems and network programming, or internal audits and investigations; and any employee of a community college district whose place of work is one which is physically located outside the state of Washington and who is employed pursuant to RCW 28B.50.092 and assigned to an educational program operating outside of the state of Washington...
- (b) The governing board of each institution, and related boards, may also exempt from this chapter classifications involving research activities, counseling of students, extension or continuing education activities, graphic arts or publications activities requiring prescribed academic preparation or special training as determined by the board: PROVIDED, That no nonacademic employee engaged in office, clerical, maintenance, or food and trade services may be exempted by the board under this provision;

. . .

WAC 357-04-010 states, in part, "[t]he provisions of the civil service rules apply to all employees and employers under the jurisdiction of chapter 41.06 RCW . . ."

TCC has indicated your position is an Administrative/Professional exempt, at-will employee of the College. As a result, your employment is not covered by Chapter 41.06 RCW or Title 357 WAC of the civil service rules (Exhibit B-2). Further, you signed an employment agreement on November 1, 2006, which describes your employment as exempt and at-will,

and you were provided with renewals of your appointment through June 30, 2012, which also refer to the position as exempt (Exhibits B-2 and A-8 through A-13).

Therefore, I conclude your position is exempt from civil service and not subject to the provisions of Chapter 41.06 RCW and Title 357 WAC generally and WAC 357-19-450(1) specifically. Because your position is exempt from the civil service law and rules, the Director's Review Program lacks jurisdiction to consider your request, and you are not afforded the right to request a Director's review under WAC 357-49-010(5). As a result, no further action can be taken with respect to your request, and the matter is closed.

Appeal Rights

Either party may appeal the results of the Director's review with regard to jurisdiction to the Personnel Resources Board (board) by filing written exceptions to the Director's determination in accordance with Chapter 357-52 WAC.

WAC 357-52-015 states that an appeal must be received in writing at the office of the board within thirty (30) calendar days after service of the Director's determination. The mailing address for the Personnel Resources Board (PRB) is P.O. Box 40911, Olympia, Washington, 98504-0911. The PRB Office is located at 521 Capitol Way South, Olympia, Washington. The main telephone number is (360) 664-0388, and the fax number is (360) 586-4694.

If no further action is taken, the Director's determination becomes final.

c: Paula H. Sheldon, TCC
Connie Goff, OSHRD

Enclosure: List of Exhibits

TAMARA ROBERSON v. TACOMA COMMUNITY COLLEGE
REMA-12-001

A. Tamara Roberson Exhibits

1. Request for Director's Review received April 24, 2012
2. Renewal appointment for Student Support Specialist July 2011
3. Position Review Request form, undated and unsigned
4. June 16, 2004 temporary appointment letter for Office Clerk 1
5. August 2, 2004 temporary appointment letter for Assessment Assistant 5
6. March 2006 Hourly Individual Requisition
7. September 2006 appointment to Student Support Specialist
8. Renewal appointment for Student Support Specialist September 2006
9. Renewal appointment for Student Support Specialist July 2007
10. Renewal appointment for Student Support Specialist July 2008
11. Renewal appointment for Student Support Specialist July 2009
12. Renewal appointment for Student Support Specialist July 2010
13. Renewal appointment for Student Support Specialist July 2011
14. Chart of hours worked 2011 to 2012 from Tamara Roberson
15. Tamara Roberson's written argument for remedial action and response to HR exhibits from TCC.

B. Tacoma Community College Exhibits

1. TCC written argument against remedial action
2. 2006 Temporary Employment Agreement

C. April 27, 2012 letter from Director's Review Office requesting clarification about the Director's review request.